



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Stephen Bear, a.k.a. Steven Bear, Valjean Bear, Steven P. Pete

1 IBIA 356 (12/29/1972)

Also published at 79 Interior Decisions 729



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF STEPHEN BEAR a/k/a STEVEN BEAR, VALJEAN BEAR,

STEVEN P. PETE

(DECEASED SAC AND FOX)

IBIA 73-7

Decided December 29, 1972

Appeal from an order affirming order determining heirs after rehearing.

Appeal dismissed.

Indian Probate: Appeals: Timely Filing

When a notice of appeal, postmarked a day after the expiration of the period, as extended, provided by regulation for filing an appeal, was not filed in the Judge's office until two days after the expiration of the period, as extended, the appeal is summarily dismissed as not timely filed.

APPEARANCES: Fairall and Fairall, appearing for Archie Bear, Jr.

OPINION BY MR. MCKEE

The decedent in this case died intestate and an order determining heirs was entered April 1, 1971, by Administrative Law Judge Vernon J. Rausch.

A petition for rehearing was filed by appellant on June 1, 1971, within the 60-day period provided for in 43 CFR § 4.241 of the regulations applicable to Indian Probate. A rehearing was held on September 29, 1971. Judge Rausch's order after rehearing affirming his initial order determining heirs was issued August 8, 1972. It is provided in 43 CFR 4.291(a), of the same regulations, that a Notice of Appeal may be filed within 60 days of such an order. Mr. Loyal S. Fairall, attorney for appellant, by letter/petition requested an extension of time of 30 days beyond the original 60 days. This was timely filed in the office of the Judge on September 20, 1972, and was duly forwarded to the Board. On September 26, 1972, the Board issued an order extending time for filing a notice of appeal to the close of business on November 6, 1972.

The appellant's notice of appeal was actually filed in the office of Judge Rausch on November 8, 1972. It was enclosed in an envelope indicating that it was Certified Mail item No. 334593 and was postmarked "November 7, 1972, p.m." A copy of the same notice

was received by the Board on November 10, 1972, enclosed in a plain envelope bearing a postmark "November 7, 1972 p.m." A finding is made that the letter/petition asking for an extension of time was timely filed within the original 60-day period following Judge Rausch's August 8, 1972 order. A finding is made that the notice of appeal was not filed within the time allowed by the order extending time, and the appeal is therefore subject to summary dismissal.

The Solicitor and this Board, acting for the Secretary under regulations approved by him, have continued the long-standing Departmental practice of rejecting appeals which were not timely filed under the regulations, Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (February 12, 1971); Estate of Jack Fighter, 71 I.D. 203 (1964). The Board in Voorhees and the Solicitor in Fighter dismissed petitions not filed on or before the expiration of the 60-day period provided in the regulations, when they were not actually received by then. In Estate of Jackson Searle, IA-S-2(B) (September 11, 1969) the Solicitor, referring to the strict policy of refusing to entertain appeals not timely filed, dismissed an appeal not actually received before the expiration of the filing period.

It is necessary to require strict compliance with the time limitations provided in the regulations for filing a petition for rehearing or a notice of appeal because 43 CFR 4.274(a) provides that:

Unless the superintendent shall have received a petition for rehearing filed pursuant to the requirements of 4.241 (a) or a copy of a notice of appeal filed pursuant to the requirements of 4.291 (b), he shall pay allowed claims, distribute the estate, and take all other necessary action directed by the Examiner's (Judge's) final order. [Emphasis supplied]

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the notice of appeal is DISMISSED, and the order of August 8, 1972, stands unchanged.

This decision is final for the Department.

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//original signed  
David J. McKee, Chairman

I concur:

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//original signed  
Daniel Harris, Member